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Rape and abuse of women in the areas of armed conflict in the former Yugoslavia

Report of the Secretary-General

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I. INTRODUCTION

1. At its fiftieth session, the General Assembly adopted, without a vote, resolution 50/192 of 22 December 1995, entitled "Rape and abuse of women in the areas of armed conflict in the former Yugoslavia".

2. In that resolution, the General Assembly strongly condemned the abhorrent practice of rape and abuse of women and children in the area of armed conflict in the former Yugoslavia and reaffirmed that rape in the conduct of armed conflict constituted a war crime and that under certain circumstances it constituted a crime against humanity and an act of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide.

3. It is important to note that, in the above-mentioned resolution, the General Assembly strongly emphasized the question of individual responsibility. It reaffirmed that persons who perpetrated or authorized the perpetration of crimes against humanity or other violations of international humanitarian law were individually responsible for those violations and that those in positions of authority who had failed to ensure that persons under their control complied with the relevant international instruments were accountable, together with the perpetrators.

4. In the same resolution, the General Assembly reminded, for the purpose of accountability, all States of their obligation to cooperate with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, and it urged all States and relevant organizations to give serious consideration to the recommendations of the Special Rapporteur of the Commission on Human Rights regarding medical care and psychological assistance to victims of rape as well as to witnesses for their psychological and mental rehabilitation.

5. In conclusion, the General Assembly encouraged the Special Rapporteur to continue to pay particular attention to the use of rape as a weapon of war particularly in the Republic of Bosnia and Herzegovina, and requested the Secretary-General to submit a report on the implementation of the resolution. The present report is submitted in accordance with that request.

II. ACTION BY UNITED NATIONS BODIES OR ORGANIZATIONS

A. Commission on Human Rights

6. The Commission on Human Rights expressed its profound concern for raped and abused women in the former Yugoslavia during its sessions in 1994, 1995 and 1996. At its fifty-second session, the Commission, in its resolution 1996/71, of 23 April 1996 expressed its outrage that the abominable, deliberate and systematic practice of rape had been used as a weapon of war in Bosnia and Herzegovina, recognized that rape in the context of armed conflict constituted a war crime and called for the protection and care of rape victims, respect for

the special needs of victims of sexual violence in the investigation and prosecution of alleged violations and punishment of those responsible.

7. The Special Rapporteur of the Commission on Human Rights has remained very attentive to the issue of rape and abuse of women in the territory of the former Yugoslavia. Information on all types of human rights abuses is systematically gathered by the Human Rights Field Operation in the Former Yugoslavia and made available to the Special Rapporteur. It should be noted that, in recent months, very few allegations on abuse of women have been made.

8. In the course of 1994 and 1995, reports of rape as an instrument of war continued to be received, but the scale of such incidents, compared with 1992 and 1993, diminished. During 1996, the Special Rapporteur received some allegations of rape incidents, although it would appear prima facie that those cases do not fall within the context of systematic and concerted practices.

B. Subcommission on Prevention of Discrimination and Protection of Minorities

9. At its forty-eighth session, the Subcommission on Prevention of Discrimination and Protection of Minorities considered the preliminary report of its Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict (E/CN.4/Sub.2/1996/26).

10. In her conclusions and recommendations, the Special Rapporteur stated that although a substantial body of international law relating to systematic rape, sexual slavery and slavery-like practices during war time existed, there was a need for further inquiry on how the international legal standards could be applied to prevent further violations as well as the manner in which those standards could be invoked to provide remedies for victims.

11. Furthermore, the Special Rapporteur addressed the issue of assistance and understanding to the victims of these atrocities since they suffered long-term consequences, stating that: "Reasons for reluctance to report wartime rape may include shame and social stigma, fear of awakening bad memories, fear of reprisals, a lack of trust in the judicial system and the national legislature and the belief in the absence of remedies".

C. Office of the United Nations High Commissioner for Refugees

12. The Office of the United Nations High Commissioner for Refugees (UNHCR) has been extensively involved in providing assistance and social services in the territory of the former Yugoslavia to refugees and displaced persons affected by the conflict. UNHCR has established community-based projects, managed by non-governmental organizations, which are directed towards a general group of beneficiaries such as victims of rape and abused women.

13. The main UNHCR community project is based in Bosnia and Herzegovina and includes approximately 30 assistance centres. The others are in Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro).

14. UNHCR gives priority to all survivors of rape and abused women in the former Yugoslavia in terms of protection and assistance in the form of food distribution, shelter, non-food items, health including reproductive health care, education and community mobilization activities. The community-based programmes in Bosnia and Herzegovina include psychological support and counselling services.

15. Particular projects supported by UNHCR in Bosnia and Herzegovina through local non-governmental organizations are:

(a) "Zena", presently run by Bosnian women implementing occupational and income generating activities with war traumatized/displaced women and female ex-detainees in East Mostar and Celebici;

(b) "Zena 21", also run by Bosnian women, operates a 24-hour emergency telephone line offering immediate professional psychological assistance to persons in distress in the Sarajevo vicinity;

(c) "Stope Nade" is the local counterpart of the international non-governmental organization "Marie Stopes International". It runs women's support centres in Bihac, Sarajevo, southern Bosnia and western Herzegovina and offers occupational and therapeutic activities for survivors of rape;

(d) "Bosfam" directs eight women's centres in the Tuzla area. It offers counselling to rape survivors;

(e) "Plavi Most" provides community-based home visiting services to families with one or more members who are survivors of physical violence and rape.

16. UNHCR has been provided with $5 million by the Government of the United States of America to operate a project for Bosnian women. This initiative includes micro-credit programmes, micro-enterprise development, psycho-social support, child and elderly care and support for women survivors of violence so as to enable them to engage in much-needed income generating activities and to participate in the reconstruction and revitalization of the economy of Bosnia. The project also seeks to discourage migration of rural women to urban centres.

17. In 1995, UNHCR published guidelines on prevention and response to sexual violence against refugees and guidelines on evaluation and care of victims of trauma and violence. The guidelines are designed to assist the international community and field staff to understand how sexual violence can be prevented and suggests numerous measures involving educational training.

D. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

18. The International Tribunal was established by the Security Council in its resolution 808 (1993) of 22 February 1993. It is mandated to prosecute serious violations of humanitarian law perpetrated in the former Yugoslavia since January 1991.

19. In accordance with the Statute, the Office of the Prosecutor is requested, in pursuance of its articles 2 to 5, to investigate and prosecute sexual assaults as serious violations of international humanitarian law. This mandate is underlined by paragraph 11 of the Secretary-General's report in response to paragraph 2 of Security Council resolution 808 (1993) (S/25704), in which the Secretary-General recalled that the Security Council had condemned "the practice of 'ethnic cleansing' and the massive, organized and systematic detention and rape of women, and reaffirmed that those who commit or have committed or order or have ordered the commission of such acts will be held individually responsible in respect of such acts". Furthermore, article 5 (g) of the Tribunal's Statute includes rape as a crime against humanity.

20. The Office of the Prosecutor is currently undertaking investigations into serious violations of humanitarian law committed in the former Yugoslavia, specifically sexual assaults. These investigations cover sexual assaults perpetrated against women, men or minors during military take-overs in detention centres and camps.

21. On 26 June 1996, the International Tribunal issued an indictment against Dragan Gagovic. This case is of major legal significance since it is the first indictment dealing specifically with sexual offences.

22. In accordance with the information provided by the International Criminal Tribunal, 22 per cent of all counts charged by the Office of the Prosecutor concerned sexual assaults; 41 per cent of those indicted by the Office of the Prosecutor have been charged inter alia with sexual assaults; 50 per cent of all persons in positions of superior authority indicted by the Office of the Prosecutor have been charged with sexual assaults committed by their subordinates; and 18 per cent of all persons in position of superior authority indicted by the Office of the Prosecutor have been individually charged for sexual assault.

23. Since its inception, the Office of the Prosecutor has taken several measures related to the presence of female staff at the International Tribunal. In this regard, the appointment of a Legal Adviser for Gender Issues to oversee the implementation of its gender policy and the prosecution of sex related crimes should be mentioned. Furthermore, the establishment of gender investigation teams, including those specifically formed to look into sexual assault, should also be mentioned as a part of the overall prosecution strategy.

24. In resolution 50/192, the General Assembly stressed the need for protection of victims and witnesses of such cases. The Office of the Prosecutor, in

accordance with the Statute of the International Tribunal, is concerned with protecting the identity of victims of sexual assault for reasons of safety and privacy. Consequently, a Victims and Witnesses Unit was established by the International Tribunal pursuant to article 22 of the Statute and rule 34 of the Rules of Procedures and Evidence. Its main responsibility is to recommend measures for the protection of victims and witnesses who will be heard by the International Tribunal and provides such persons with counselling and support.

25. It has been decided that, in the area of protection, the judges of the International Tribunal can grant special measures in and outside the courtroom both before and during a trial to protect witnesses who satisfy the judges that they and/or their family are at risk because of their testimony. These special measures, which have to be consistent with the rights of the accused, are set out in articles 69, 75 and 79 of the Rules of Procedure and Evidence of the Tribunal. They have been implemented in several decisions of the Trial Chamber granting protection to witnesses.

26. The Trial Chamber may order:

(a) That the identity of a witness may not be disclosed to the public and the media. In this case, a witness may be given a pseudonym, which will be used in all trial proceedings and when the trial is being discussed by all parties;

(b) The name of the witness can be removed from all existing court documents;

(c) The name, address and whereabouts and other information that may identify a witness can be withheld from the public and the media;

(d) This identifying information can be sealed and not included in any of the Public Records of the International Tribunal;

(e) The public and the media can be ordered not to photograph, video record or sketch a witness while he/she is at the International Tribunal;

(f) Voice and image altering devices can be used to change the appearance of a witness on court television screens and/or the sound of the voice of a witness, and screens can be placed around a witness so that he/she is not recognized by the general public;

(g) A witness may be permitted to give evidence in camera. Therefore, the court sessions are closed to the public and only the accused, the judges, lawyers and court officials are present in the courtroom;

(h) For vulnerable witnesses, such as in a case of sexual assault, evidence may be provided from a separate room at the court, through a one-way closed television circuit, to spare a witness from having to see the accused. Under these circumstances, the judge is in a position to see the faces of the witness on a television screen placed on his/her desk and the witness is able to follow the proceedings in the courtroom;

(i) In highly exceptional circumstances, a witness may be granted anonymity, and the name and other identifying data may be withheld from the accused and his/her lawyer;

(j) In exceptional circumstances, a witness may be able to give evidence before the start of the trial by way of deposition (article 71 of the Rules of Procedures and Evidence of the Tribunal). Therefore, the witness does not have to travel to The Hague but can be questioned somewhere else by the Tribunal lawyers. The witnesses may also be cross-examined under the same procedure. The proceedings will be recorded, at least on audio tape;

(k) During a trial, a witness may in exceptional circumstances, give evidence in his/her own country by way of a live video link, called "video conference". In this case the judges will be able to examine the witness, in addition to lawyers for the defence and prosecution;

(l) Many of the measures stated above have already been implemented. On 10 August 1995, the Trial Chamber agreed that the situation of a number of witnesses in the International Tribunal's first trial - the case of Dusko Tadic - called for the imposition of special protective measures. Special measures to protect witnesses cannot be applied unless ordered by the Trial Chamber. A witness, the lawyer for the case, or the Victims and Witnesses Unit can apply to the court giving specific reasons why any of these measures are required for the protection of a witness;

(m) The Victims and Witnesses Unit has a permanent position of a protection officer, who is responsible to coordinate responses to witness security requirements. The current Protection Officer is a former police officer who has had many years of experience in witness protection at the international level;

(n) Security of a witness while in the Netherlands is the responsibility of the Government of the Netherlands, and experience has shown that, where necessary, very high-level and competent local police protection must be provided;

(o) Security for a witness within the International Tribunal is a United Nations responsibility and is provided by the security officers employed by the International Tribunal;

(p) When necessary, a witness is collected from the airport and directed to his/her accommodations by the Victims and Witnesses Unit staff. Each accommodation site has been carefully checked and it receives a 24-hour attention from the authorities of the Netherlands;

(q) Where the safety of a witness travelling to the International Tribunal gives rise for concern, local police of the country of residence are requested, through governmental channels when necessary, to ensure that adequate protection and assistance is provided to the witness travelling to the International Tribunal. To that end, the Victims and Witnesses Unit has compiled a network of contacts in countries where witnesses reside. This network can also be called

upon if a witness fears security problems on his/her return to the country of residence;

(r) Negotiations are currently in process to facilitate the temporary or permanent relocation of witnesses;

(s) The Victims and Witnesses Unit provides a Support Officer to assist the witnesses while they are in the Netherlands;

(t) This programme of support includes:

(i) Coordination of arrangements to ensure that all witnesses are equipped with adequate documentation to travel to the Netherlands and to re-enter their country of residence;

(ii) Provision of health and travel insurance for all witnesses attending the proceedings of the Tribunal;

(iii) Accommodations, where the Victims and Witnesses Unit provides a 24-hour support programme;

(iv) An induction programme to the mechanics of the Court and a video showing an actual court session.

III. RESPONSE OF NON-UNITED NATIONS ACTORS

A. International Committee of the Red Cross

27. The International Committee of the Red Cross (ICRC) is confined in its activities, as far as this matter is concerned, to the provision of emergency aid to people caught in situations of armed conflict. Consequently, ICRC has established programmes for immediate assistance, such as hospitals with surgical supplies and basic medicines, but is not involved in psychological treatment programmes, whether for rape victims or otherwise.

B. European Community Task Force

28. The European Community Task Force, established in October 1992, coordinates food, medical and other assistance, including activities related to psychological and social help.

29. The European Community supports 22 international psychological and social assistance organizations, which include programmes for traumatized children and women in the region of Bihac and in Sarajevo, Mostar and Tuzla. Projects for victims of war have also been implemented in Eastern Slavonia, the southern Dalmatian Coast and Zagreb.

30. The European Community Task Force has prepared a manual entitled "Theory and Practice of Psycho-social Projects under War Conditions in Bosnia and Herzegovina and Croatia".

IV. CONCLUDING REMARKS

31. From the information available, only sporadic cases of rape and sexual violence have occurred since the last report of the Secretary-General (A/50/329). It would appear prima facie that those cases do not fall within the context of systematic and concerted practices.

32. It must be kept in mind, however, that reports of sexual assault are difficult to obtain in view of the victims' reluctance to describe such experiences since they implicitly carry with them social stigma and fear of reprisals.

33. Although the international community has responded to the need for investigation, continuing attention must be given to preventive and curative measures. Since the situation in many parts of former Yugoslavia remains unstable, it will be necessary for the international community to remain vigilant and to implement special protective measures for women and children. Programmes of protection and assistance for victims and witnesses must be strengthened in order to build confidence for the future.